

REMARKS

This responds to the Final Office Action dated July 19, 2006. No claims are amended, cancelled, or added. As a result, claims 1-17 remain pending in this patent application. For brevity, Applicant's arguments filed 5/16/2006 are incorporated by reference herein.

§102 Rejection of the Claims

Claims 1, 3, 8, 11, 13-15 and 17 were rejected under 35 U.S.C. § 102(e) for anticipation by Thompson (U.S. Publication No. 2004/0167587A1). Applicant does not admit that Thompson is prior art and reserves the right to swear behind it at a later date as provided under 37 C.F.R. § 1.131. Nonetheless, Applicant respectfully traverses.

The Final Office Action states:

Thompson discloses a first module comprising multi-mode programmer 5 and a plurality of second modules comprising medical devices 8A-8D. Programmer 5 clearly functions in an interface capacity and is capable of listing families of cardiac rhythm management system devices since the programmer can configure itself for communication with medical device 8 based on the telemetry signal 12 received from medical device 8. The programmer dynamically selects an appropriate communication mode see paragraph 0035. This is the equivalent of the interface including a first module listing a plurality of CRM system device families and a user can configure the programmer 5 to communicate with a CRM device by selecting the appropriate CRM device family. Medical devices 8A-8D form a plurality of second modules, each associated with one of the cardiac rhythm management system device families listed by the first module. The different telemetry signals 12 may be modulated differently and different coding schemes may be associated with different signals 12 thereby providing a plurality of high-level parameters associated with each of the cardiac rhythm management device families listed by the first module.

(Office Action at 2-3.) Applicant respectfully disagrees. First, Applicant respectfully submits that the medical devices 8A-8D shown in Thompson cannot in any way constitute “second modules” of a user interface device for a programmer for a cardiac rhythm management system, as similarly recited or incorporated in these claims. Instead, the medical devices 8A-8D are physically separate devices from a user interface—indeed they are the very medical devices to which the programmer 4 of Thompson provides a wireless programmer user interface. Second, Applicant respectfully disagrees that selecting a communication mode is somehow equivalent to a user interface module listing a plurality of cardiac rhythm management system device

families—nothing in the cited portion of Thompson indicates that its communication modes are distinct as to different device families, or used for such a purpose. In asserting such an equivalence, the Final Office Action appears to be inappropriately relying on a theory of inherency. Applicant respectfully submits that the Final Office Action has not established a *prima facie* case of inherency because, as recited in MPEP § 2112, "In relying upon the theory of inherency, the examiner must provide basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art," citing *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). Nothing in Thompson or the reasoning provided in the Final Office Action explains why a first module listing a plurality of cardiac rhythm management system device families necessarily flow from permitting different communication modes—which need not be distinct across different device families. Third, because the medical devices 8A-8D cannot possibly constitute a plurality of second modules included within a user interface for a programmer for a cardiac rhythm management system device (as explained above), Applicant respectfully submits that the inclusion of high level parameters in such medical devices 8A-8D does not provide any basis for a second module of the user interface that provides a plurality of high-level parameters associated with each of the cardiac rhythm management system families listed by the first module.

In sum, Applicant respectfully submits that Thompson apparently fails to disclose all elements recited or incorporated in the present claims, therefore, no *prima facie* case of anticipation exists with respect to these claims. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

§103 Rejection of the Claims

Claims 2, 4-7, 9, 10, 12 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Thompson (U.S. Publication No. 2004/0167587A1). Applicant respectfully traverses.

In responding to Applicant's previous arguments, the Final Office Action stated:

Applicant's arguments filed 5/16/06 have been fully considered but they are not persuasive. A user interface provided at startup is an intended use function that the device of Thompson is capable of performing.

In response to applicant's argument that a user interface provided at startup of a programmer for a cardiac rhythm management system is lacking in Thompson, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

(Final Office Action at 4-5.) Applicant respectfully traverses and requests further clarification. Reserving the right to later address the issue as to whether a user interface provided at startup constitutes an intended use, Applicant's previous response filed 5/16/2006 did not rely on such incidental language (e.g., "provided at startup") as rendering the claims patentably distinct. Instead, Applicant's previous response cited the absence in Thompson of any disclosure, teaching, or suggestion of a user interface of a programmer for a cardiac rhythm management system device comprising "a first module listing a plurality of cardiac rhythm management system device families" as recited or incorporated in these claims. Thus, Applicant respectfully traverses on the grounds that no *prima facie* case of obviousness exists with respect to these claims for the reasons discussed above with respect to the § 102 rejection. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6951 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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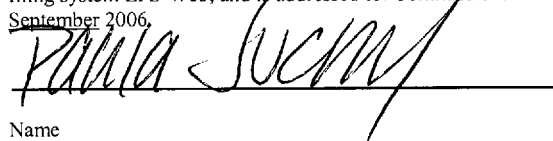
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 19 day of September 2006.


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